IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.339 OF 2006

Murlidhar V. Walhekar & Ors. ....Appellants
V/s.
Kaluram T. Bhumkar & Ors. ....Respondents

Mr.M.T. Pise for the Appellants.

Ms.Smita Mane i/b Mr.P.B. Shah for Respondent No.1.

CORAM : S.J. VAZIFDAR, J.
DATED : 6TH AUGUST, 2007.

P.C. :

1. It was contended that the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act, 1947 was not applicable to the facts of this case. However, the impugned order records that the Appellants themselves contended that the Act was applied and under the consolidation scheme the Appellants' land bearing Survey Nos.14/13 and 14/14 were included in the new Survey No.14/9. This contention on behalf of the Appellants is referred to in paragraphs 11 to 15 of the impugned order. Faced with this, it was contended that the submission was wrongly recorded by the learned Judge. However, no application for speaking to the minutes or for rectification of the order has been made.

2. Further the learned Judge has come to the conclusion that the evidence by way of two maps produced by the Appellants was not sufficient to establish the Appellants claim to the suit land. This pertains to appreciation of evidence.

3. It is pertinent to note that the consolidation scheme was given effect in 1969. In the impugned order, the learned Judge has recorded that even as late as in 1985, the Appellants were aware of the Respondents' assertion in respect of the said land. Despite the same, the suit was filed only in 1996. In these circumstances, the learned Judge cannot be faulted for having held that the Appellants had not established their case. In any event, this is a pure question of fact.

4. In the circumstances, there is no question of law which falls for consideration. The Second Appeal is therefore dismissed.